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BellSouth Telecommunications, Inc.
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December 8, 2006

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000121A-TP
**In Re: Investigation into the establishment of operations support
systems permanent incumbent local exchange Telecommunications
companies**

Dear Ms. Bayó:

Please find enclosed for filing BellSouth's response to the Florida Commission Staff's letter dated November 14, 2006, regarding the interpretation of Section 4.4.3 of the former SEEM Plan.

Sincerely,


Robert A. Culpepper

Enclosures

cc: Jerry D. Hendrix
James Meza, III

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Robert A. Culpepper
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
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December 8, 2006

Adam J. Teitzman
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 000121A-TP -- Interpretation of Section 4.4.3 of the prior SEEM Plan

Dear Mr. Teitzman:

This is in response to your correspondence dated November 14, 2006, wherein you advised that the Commission Staff is of the opinion that pursuant to Section 4.4.3 of the former Florida SEEM Plan, BellSouth Telecommunications, Inc. ("BellSouth") owes a fine of \$663,000 for late remittance of certain Tier-2 payments made in 2004 and 2005. As explained below, BellSouth strongly disagrees with the Staff's position and respectfully requests for the Staff to reconsider its position on this issue.

As an initial matter, it bears repeating that PricewaterhouseCoopers LLP ("PwC"), based on an independent examination conducted in accordance with standards established by the American Institute of Certified Public Accountants, specifically concluded that BellSouth accurately disbursed SEEM payments to CLECs (Tier-1 payments) according to the timeframes and interest payment requirements set forth in the former Florida SEEM Plan. Thus, the issue raised in your correspondence has absolutely no impact on any CLEC. As for payments to the Florida Public Service Commission or its designee (Tier-2 payments), PwC concluded that in a few instances BellSouth was late in paying a portion of the Tier-2 amount. Specifically, PwC noted that BellSouth paid certain Tier-2 payments after such amounts "were identified by BellSouth based on a [data] rerun completed by BellSouth **subsequent** to the payment due date."¹ Of course, BellSouth promptly paid the additional amounts upon completion of the data rerun.

¹ See Attachment A to PwC's Report of BellSouth Telecommunications' 2004 Florida SEEM Penalty Payments dated March 23, 2006 ("PwC Report")(emphasis added). The PwC Report was filed with the Commission, pursuant to a claim of confidentiality, on October 4, 2006.

It should be noted that BellSouth did not knowingly withhold payment of any Tier-2 amount. Rather, through data reruns and due diligence, BellSouth discovered that certain additional Tier-2 amounts were owed, and immediately paid these amounts following such discovery. To interpret Section 4.4.3 of the former SEEM Plan in the manner suggested by the Commission Staff effectively punishes BellSouth for undertaking such due diligence. Indeed, PwC specifically noted that “[t]he wording provided in the Florida SEEM Administrative Plan, section 4.4.3, **does not specifically address what/if any late fees are to be paid by BellSouth in the event of penalties paid late due to a rerun.**”² Absent specific language imposing a late fee in such instances, the Commission Staff should not adopt an interpretation that results in a grossly inequitable result.

Simply put, a punitive interpretation of Section 4.4.3 of the former SEEM Plan runs completely counter to BellSouth’s practice (as confirmed by PwC) of making timely and accurate SEEM payments. As such, the interpretation is patently unreasonable and should be disregarded. As stated in prior correspondence, it remains BellSouth’s position that Section 4.4.3 of the former SEEM Plan applies only if BellSouth intentionally fails to make a required Tier-2 payment or when BellSouth is negligent in processing the underlying measurement data used to calculate such payment. Although it may be true that there are no specific limitations or qualifications as to what constitutes a late Tier-2 payment subject to Section 4.4.3 of the former SEEM Plan, it is equally true that no regulatory body has adopted Staff’s interpretation of such section.³

In your correspondence, you noted that “penalizing intentional and negligent failures to pay are not the only purposes of Section 4.4.3. Section 4.4.3 of the former SEEM Plan also served as an incentive to BellSouth to put in place the necessary safeguards to ensure that it is in full compliance with all Tier-2 Enforcement Mechanisms.”⁴ From an incentive standpoint, Sections 2.5 and 2.6 of the former SEEM Plan contain fines for late, incomplete, or inaccurate SQM reports.⁵ Additionally, as the enclosed spreadsheet indicates, if the Tier-2 payments in question were treated the same as late Tier-1 payments (i.e. subject to 6% simple interest per annum), BellSouth would owe \$385 in late fees. Based on the Staff’s interpretation of Section 4.4.3 of the former SEEM Plan, a \$663,000 fine for the late Tier-2 payments in question results in an effective interest rate that exceeds 10,000% per annum, and is 146,000% per annum for two specific payments. An incentive that results in what appears to be a usurious interest rate under Florida law cannot credibly be considered an appropriate incentive.

² PwC Report, Attachment A (emphasis added).

³ If Staff does not reconsider its interpretation, BellSouth must renew its request to change the wording of the same provision in the current SEEM Plan in the context of the ongoing SQM/SEEM workshop.

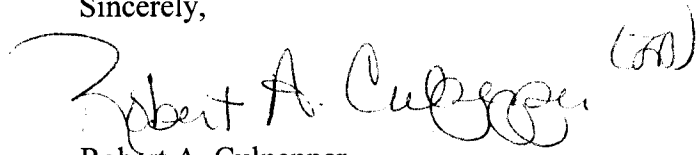
⁴ Tietzman letter dated November 14, 2006, at page 2.

⁵ Section 2.5 of the former SEEM Plan provides in relevant part: “BellSouth shall pay penalties to the Commission, in the aggregate, for all late SQM reports in the amount of \$2000 per day.” Similarly, Section 2.6 of the former SEEM Plan provides in relevant part: “BellSouth shall pay penalties to the Commission, in the aggregate, for all incomplete or inaccurate SQM reports in the amount of \$400 per day.”

Adam J. Teitzman
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In closing, BellSouth disagrees with Staff's interpretation of Section 4.4.3 of the former SEEM Plan and respectfully urges Staff to reconsider its position. Notwithstanding such disagreement, BellSouth is ready and willing to discuss a reasonable and fair resolution of the issue.

Sincerely,


Robert A. Culpepper

Enclosure

cc: Jerry Hendrix (w/enclosure)
James Meza (w/enclosure)

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